

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

Criminal No. 18188

UNITED STATES OF AMERICA,  
*vs.* Plaintiff-Appellant,  
JAMES J. CARROLL,  
Defendant-Appellee

STATEMENT IN OPPOSITION TO APPELLANT'S  
STATEMENT OF JURISDICTION

The appellee in the above-entitled cause for his argument in opposition to appellant's statement as to jurisdiction herein as to the first 45 counts of the Indictment respectfully shows the following:

Two Indictments were returned against the defendant in the United States District Court for the Western District of Missouri. The Indictment in the instant cause, Cause No. 18188, consisted of 101 counts. Counts 1 through 45 concerned alleged violations in the year 1948 and the remaining counts concerned alleged violations in the years 1949 and 1950.

The Indictment charged the defendant with willful failure to make a return covering total payments (which exceeded the sum of \$600.00 in each instant) allegedly made to certain

named recipients during the calendar years 1948, 1949 and 1950, which payments to these recipients together with their names and addresses were required to be reported on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City, Missouri, on or before the 15th day of February following the year in which the payments were made.

The language employed in each Count of the instant Indictment was practically identical except as to variations in the amount of payment, the year in which the payments were made, the name and address of the recipient thereof, and the date for the reporting of same. The first Count of the instant Indictment is representative of the other Counts and provided as follows:

#### "COUNT 1

That during the calendar year 1948, JAMES J. CARROLL, who was a resident of the City of St. Louis, State of Missouri, made payment to Carl Abbott, 416 West Morgan, Sedalia, Missouri, of the sum of \$7,536.00, and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1099, to the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City 2, Missouri, setting forth the amount of the aforesaid payment and the name and address of the recipient of the aforesaid payment; that, well knowing all of the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return to said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U. S. C. Section 145(a)''

The second Indictment, Cause No. 18189, was in three counts and charged the defendant with willful failure to make a return on United States Treasury Department Internal Revenue Service Form 1096, reporting the total number of returns on Form 1099 attached thereto for each of the years 1948, 1949 and 1950, and that these Forms 1096 together with the accompanying Forms 1099 were required to be filed with the Commissioner of Internal Revenue, Processing Division, C. C. Station, Kansas City, Missouri, on or before the 15th day of February following the year in which these payments were made. The recipients named in this Indictment were the same individuals set out in the first Indictment.

The language employed in the second Indictment was practically identical in each Count except as to the variations in the amounts of payments (which always exceeded the amount of \$600.00 to each recipient), the year in which these payments were made, the name and address of the recipients thereof and the required date for reporting the information. The first Count of this Indictment is representative of this group and provides as follows:

#### "COUNT I

That during the calendar year 1948, JAMES J. CARROLL, who was resident of the City of St. Louis, State of Missouri, made the following payments to the following persons:

and that under the provisions of Section 147 of the Internal Revenue Code and Treasury Regulations 111, Section 29.147-1, as amended, the said James J. Carroll was required on or before February 15, 1949, to make a return on United States Treasury Department Internal Revenue Service Form 1096, to the Commis-

sioner of Internal Revenue, Processing Division, U. C. Station, Kansas City 2, Missouri, setting forth the number of returns on Form 1099 attached thereto; that, well knowing the foregoing facts, the said James J. Carroll did willfully and knowingly fail to make said return, Form 1096, to the said Commissioner of Internal Revenue or to any other proper officer of the United States at the said time and place.

In violation of Section 145(a), Internal Revenue Code; 26 U. S. C., Section 145(a).''

We have omitted from the above quoted count the specific listing of recipients, their respective addresses and the total alleged payments made to them.

Thus, under both Indictments the defendant was charged with alleged violations in the calendar years 1948, 1949 and 1950. The defendant, as to each Indictment, filed a motion to dismiss which alleged in part that the Court had no jurisdiction over the person or subject matter for any alleged offense in the year 1948, and also that the Indictment did not allege sufficient facts to constitute an offense. The Court dismissed the first Indictment and the first count of the second Indictment following a consolidated hearing on defendant's motions to dismiss.

The Court interpreted Section 147 of Title 26 to require a return and not a group of returns to be filed, and said that Form 1096 is the Form required by the Statute. The Court stated that Forms 1099 are a part of Form 1096 and are not separate and distinct returns and, therefore, the information on Form 1099 is therefore part of Form 1096. The Courts also said that an individual might be indicted for making a false return if he did not list the correct number of Forms 1099 on the Form 1096. Therefore, he held that there could be only one Indictment for each year for failing to file Forms 1099 and 1096. The Court thereupon dismissed the instant Indictment in its entirety.

The Court then took up the second Indictment and dismissed the first count of that Indictment dealing with the year 1948, for the reason that the Internal Revenue Regulations required information returns to be filed with the Processing Division in New York City rather than the Processing Division in Kansas City, Missouri. A Regulation concerning the place where the information forms were to be filed was approved on February 16, 1949, under T. D. 5687, 1949-1 C. B. 9, and amended Regulation 111, Section 29.147-1, by changing the place where the informational returns were to be filed, from New York City, New York, to Kansas City, Missouri. The Court said that information forms for the year 1948 due before February 16, 1949, had to be filed in New York City, and therefore held that jurisdiction for the year 1948 was in New York, New York.

The jurisdiction of the Supreme Court to review on direct appeal an order of a District Court dismissing an Indictment based on construction of a statute is conferred by Section 3731 of Title 18, U. S. C. However, where the order of a District Court is not based solely upon the construction of the statute but has an additional and independent ground, the Supreme Court is not authorized to review the action.

The dismissal of the first forty-five counts of the Indictment dealing with alleged violations during the calendar year 1948 was based on the additional ground that the Court had no jurisdiction over the person of the defendant. The transcript of the oral opinion of the District Court leads to that conclusion. In its oral opinion the Court first dismissed the instant Indictment and then considered the second Indictment, Cause No. 18189. The Court dismissed the first count of the second Indictment dealing with alleged violations during the calendar year 1948, for the reason that it had no jurisdiction over alleged failure to file information forms for the year 1948 because Treasury Regulation



111, Section 29.147-1 changing the place of filing of those forms from New York to Kansas City was not effective until February 16, 1949. The Court apparently acted under Article 3, Section 2 of the Constitution and Rule 18 of the Federal Rules of Criminal Procedure.

A comparison of the Indictment makes it clear that the Court had reached the same conclusion as to its jurisdiction over the first forty-five counts of the instant Indictment. The dismissal of these counts is, therefore, based on the additional ground that the District Court had no jurisdiction over the person.

*United States v. Wayne Pump Co.*, 317 U. S. 200, and *United States v. Swift & Co.*, 318 U. S. 442, held that the Supreme Court does not have jurisdiction where there is an independent ground in addition to the construction of a statute for sustaining the dismissal of an Indictment.

It is, therefore, submitted that the Supreme Court does not have jurisdiction to review on direct appeal the first forty-five counts of this Indictment dealing with the year 1948.

Respectfully submitted,

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